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Trade, environment and sustainable development

Report of the Secretary-General

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INTRODUCTION

1. The present report provides preliminary conclusions and recommendations emanating from the consideration of a number of key issues relating to the linkages between trade, environment and sustainable development. The issues covered include: trade and development aspects of multilateral environmental agreements (MEAs), including the relationship between the provisions of the multilateral trading system and trade measures pursuant to MEAs; environmental policies and competitiveness; eco-labelling; exports of domestically prohibited goods; finance and technology transfer; sustainable development of the commodity sector; and capacity-building and institutional issues. A number of these issues figure on the agenda of the Committee on Trade and Environment (CTE) of the World Trade Organization (WTO) and will be further discussed at the first Ministerial Conference of WTO, to be held at Singapore, in December 1996. Certain issues have been discussed in the Ad Hoc Working Group on Trade, Environment and Development of the United Nations Conference on Trade and Development (UNCTAD), which completed its work in November 1995, or have been referred to in the report of the Commission on Sustainable Development on its third session. 1/

2. The report was prepared by the UNCTAD secretariat as task manager for trade, environment and sustainable development, in accordance with arrangements agreed by the Inter-Agency Committee on Sustainable Development (IACSD) at its fourth session. It is the result of consultation with the secretariats of the United Nations Environment Programme (UNEP), the Department for Policy Coordination and Sustainable Development of the United Nations Secretariat, and WTO.

3. Further analysis of these issues is contained in the addendum to this report (E/CN.17/1996/8/Add.1), which was also prepared by the UNCTAD secretariat.

CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

1. Trade measures in multilateral environmental agreements: trade and development aspects

4. Multilateral environmental agreements (MEAs) are an important and effective means of addressing global environmental problems and avoiding the use of extraterritorial, unilateral measures. As called for in the Rio Declaration (in particular, principles 7, 12 and 27), 2/ MEAs and any trade provisions therein should be based on multilateral cooperative approaches and the principle of common but differentiated responsibilities of States.

5. Agenda 21 recognized that a number of cases, trade provisions in MEAs have played a role in tackling global environmental challenges. It also suggested more precision, where necessary, and clarification of the relationship between

GATT/WTO provisions and some of the multilateral measures adopted in the environmental area. 3/

6. The WTO Committee on Trade and Environment (CTE) is examining the relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, pursuant to multilateral environmental agreements. Several considerations are relevant.

7. First, where trade is not the primary cause of the environmental problem, there should be a presumption against the use of trade measures. Other instruments such as access to finance and technology transfer are likely to be more efficient and more equitable in securing cooperation and in achieving the environmental objectives of the MEA. Trade measures, where effective and necessary to achieve the environmental objectives of a particular MEA, should only be used as a last resort. Use of trade measures should not deter the continued search for other options which are equally - or more - effective and equitable, and uphold principles 7 and 12 of the Rio Declaration.

8. Secondly, trade provisions in MEAs may have different objectives and should be analysed separately for each MEA. In such an analysis, concepts such as necessity, effectiveness and proportionality are important. The aim should be to implement measures that are not more trade restrictive than necessary to fulfil the multilaterally agreed objectives of the agreement. However, it may be difficult to judge the necessity and effectiveness of trade measures, in particular where trade measures are part of a package of measures, including positive measures (such as access to finance and transfer of technology, incentives to encourage trade in environment-friendly substitutes, voluntary mechanisms on foreign direct investment and technology transfer, and market-based instruments). There is therefore a clear premium attached to establishing comprehensive non-binding guidelines for MEA negotiators.

9. Thirdly, both trade and environmental agreements are evolving bodies of international law which, inter alia, may raise the question of hierarchy between the two. Attempts to achieve consistency between the obligations of MEAs and WTO could conceivably take place at three levels: (a) by trade and environment officials and other interested parties at the national level; (b) by seeking relevant inputs from trade officials when trade measures are considered in the negotiation of MEAs or their amendments; and (c) by seeking clarification of the relevant provisions of the MEA with respect to WTO rules.

10. Discussions at CTE have focused on: the use of trade measures against non-parties who are members to WTO; what constitutes an MEA; issues such as necessity, effectiveness and proportionality of using trade measures in MEAs; the specificity of trade measures pursuant to an MEA: transparency and notification provisions; the resolution of possible disputes between a non-party and a party to an MEA; and the issue of hierarchy between the MEA and WTO, in particular in the case of dispute settlement. Different approaches advocated by delegations at the WTO Committee on Trade and Environment include the status quo, the ex ante and the ex post approach, and a combination of ex ante and ex post approaches, which have been described in the addendum.

11. Apart from legal questions, trade measures pursuant to MEAs may involve wider economic and developmental issues. Costs of compliance may differ widely among parties to an MEA, based on variables like the specificity of standards; the price, availability and adequacy of substitutes; the degree of patent protection of specified technologies; administrative and other factors. Trade and competitiveness effects are different for each agreement and may change according to dynamic factors such as the rate of economic growth, availability of environmentally friendly technologies and substitutes, amendments to the agreements, and the timely availability of finance. Interim assessments of MEAs could be an opportunity for the conferences of parties to take account of these factors.

12. Costs may also vary in accordance with the levels of economic development and existing environmental standards prior to a country's accession to an MEA. It is to be noted that economic and development costs will not necessarily or even probably be correlated with the shares of responsibility for environmental damage or remedy. In this context, it is important to apply the principle of common but differentiated responsibility in the context of MEAs.

13. In parallel with the CTE process, the international debate so far indicates that there may be a need to develop comprehensive non-legally binding guidelines aimed at assisting MEA negotiators in their consideration of possible future use of trade measures in MEAs and of a whole range of policy instruments, including positive measures. Since such guidelines involve many aspects, including legal, economic and developmental considerations, different organizations may need to be involved in the process, in accordance with their respective mandates and competence.

2. Environmental policies and competitiveness

14. Environmental policies addressing local environmental problems may have positive and negative effects on competitiveness. Given the complexity of the linkages between environmental requirements and competitiveness, sound analysis is necessary, particularly additional empirical research on the conditions under which competitiveness impacts are likely to be positive and those under which they may be negative. Discussions have focused on competitiveness at the firm and sector level, and on the concept of national welfare.

15. UNCTAD's Ad Hoc Working Group on Trade, Environment and Development, endorsing a recommendation contained in the report of the Joint Session of Trade and Environment Experts to the OECD Council at the ministerial level, has firmly rejected demands sometimes made to introduce so-called "green countervailing duties" or other protectionist trade measures inconsistent with WTO principles to compensate for negative competitiveness effects, whether real or perceived, of environmental policies. 4/ It is also acknowledged that it would be inappropriate to relax environmental standards or their enforcement in order to encourage foreign direct investment or to promote exports.

16. While competitiveness concerns have been expressed by firms both in developing and developed countries, the nature of the concerns differ widely. It may be relatively more difficult for firms in developing countries, especially small and medium-sized enterprises (SMEs), to adjust to rapid changes

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in environmental requirements. Likewise, given the concentration of developing countries' exports in sectors where environmental requirements are emerging and the fact that the share of SMEs in total exports of a number of developing countries is relatively high, exports from developing countries may be more vulnerable to adverse competitiveness effects of environmental policies. Efforts should also be made to identify win/win situations and to design and implement policies that maximize the mutual supportiveness of trade and environmental policies.

17. Complying with the environmental requirements of importing countries may raise particular competitiveness and developmental concerns for developing countries and countries with economies in transition and may divert resources from investments (e.g. sanitation and education) which may yield higher returns to the environment, taking into account direct and indirect effects. In this context, positive measures are particularly relevant. The UNCTAD Ad Hoc Working Group on Trade, Environment and Development has concluded that positive measures such as improved market access, improved access to finance, transition mechanisms, access to and transfer of technology, capacity-building and special provisions for small firms and for some sectors are effective instruments in supporting developing countries and countries in transition in their efforts to meet the objectives of sustainable development. 5/

3. Eco-labelling

18. Eco-labelling programmes are established essentially for environmental purposes and provide an opportunity for producers to differentiate and market products on the basis of their environmental attributes.

19. Eco-labels are being increasingly developed in sectors of export interest to the developing countries, a trend which has generated concern in those countries. Because of their potential to affect exports, eco-labelling and other instruments based on life-cycle analysis must be sensitive to differing environmental and developmental conditions across countries. Particular process-related criteria may not be as effective and relevant in terms of environmental protection in the exporting country as they are in the importing country. Improved transparency, including transparency through consultation with foreign suppliers, and the establishment of mutual recognition between eco-labelling schemes and equivalencies between eco-criteria may assist in promoting the compatibility of trade and environment interests.

4. Exports of domestically prohibited goods

20. Developing countries have expressed concern that developed countries may export to their markets products that are banned or severely restricted in the country of origin - domestically prohibited goods (DPGs) - without providing adequate information about the risks such products could pose to public health or the environment. The issue of domestically prohibited goods is on the agenda of the WTO Committee on Trade and Environment, and discussions there have focused on the adequacy of the transparency mechanisms, the issue of product coverage and the need to avoid duplication. Developing countries have expressed the view that existing mechanisms may be inadequate both in terms of the procedure and in terms of coverage of products. For example, in none of the

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Conventions does the prior informed consent procedure include consumer products such as cosmetics, pharmaceutical, processed food and other such items. Analysis of DPGs should take account of the ongoing negotiations of a convention on prior informed consent.

5. Trade liberalization and the environment

21. Trade liberalization and improved market access, in conjunction with sound environmental policies, contribute to sustainable development. Although there is no clear linkage between trade liberalization and the environment, a priori trade liberalization could lead either to environmental improvements or degradation. Thus, any possible environmental costs associated with trade liberalization should also be considered. In this context, the Commission, at its third session, recognized that national Governments have an interest in analysing the environmental and social effects of significant changes in the volume and composition of production and consumption patterns, including those resulting from trade policy reforms, and make, if required, the necessary policy adjustments with a view to correcting market and policy failures and internalizing environmental costs. Underpricing of natural resources and subsidies can have a significant impact on both trade and the environment. Of particular relevance are subsidies that affect commodity prices, especially those agricultural and energy subsidies that may have harmful effects on both trade and the environment of developing countries.

22. It is also important to analyse the environmental benefits of removing trade restrictions and distortions. This should include an analysis of the effects of trade-distortive subsidies, tariff escalation and tariff and non-tariff barriers in major export markets on sustainable development in developing countries.

6. Sustainable development of the commodity sector

23. Research and discussions at UNCTAD and elsewhere have shown that there is a vital need to understand better the broad social and economic costs and benefits of specific actions or inactivity with regard to the environment. This will imply a change in the relative price structure. Sustainable development, particularly that of the commodity sector, requires that environmental costs and benefits be taken into account in economic strategies. Developing countries face special constraints in this respect, owing to the importance of poverty alleviation in the short term and the central role that foreign exchange earnings play in the development process. Analytical and administrative shortcomings also create significant bottlenecks for policy design and implementation.

24. The constraints that developing countries face could be considerably alleviated through international cooperation and the targeting of assistance to specific problem areas, including those at the assessment and policy levels. The search for the most efficient and cost-effective approaches to such cooperation would be facilitated by the participation of different actors, including industry associations in formulating the modalities of cooperation. There is also much to be learned by the concerned countries from the specific experiences of others.

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7. Biological diversity and trade issues

25. Sustainable development requires taking into account the limited capacity of developing countries to assess adequately the economic value of their biological resources and to develop the appropriate economic incentives that could contribute to the achievement of the main goals of the Convention on Biological Diversity. It is precisely because biological resources, if managed effectively, can create a basis for sustainable development that there is a need to launch mechanisms that would support developing countries in their efforts towards the identification, development and marketing of products and services that draw upon their unique biological and human resources. In addition, as developing countries position themselves in the emerging market for biological resources, it will be important to develop mechanisms that will seek to secure an equitable sharing of the benefits derived from the use of such resources. The BIOTRADE Initiative of UNCTAD is one of the possible mechanisms in this regard.

26. Decision II/12, adopted by the Conference of the Parties to the Convention on Biological Diversity at its second meeting (Jakarta, November 1995), requests the Executive Secretary to, inter alia, liaise with the Secretariat of WTO to inform it of the goals and the ongoing work of the Convention on Biological Diversity and to invite the secretariat of WTO to assist in the preparation of a paper for a future meeting of the Conference of the Parties which would identify the synergies and relationship between the objectives of the Convention and the WTO Agreement on Trade-related Intellectual Property Rights (TRIPS). Another concern is whether the existing systems on intellectual property rights provide them with sufficient safeguards to protect their traditional knowledge and whether it allows them to share equitably in the development of bio-technologies. Another important issue is the relationship between the TRIPS Agreement in WTO and the Convention on Biological Diversity. Those issues require further analysis. There are many overlapping trade issues which need analysis to ensure that developing countries can maximize their sustainable resource management. Work in this area is being planned by UNEP and the secretariat of the Convention on Biological Diversity.

8. Technology transfer

27. With respect to intellectual property rights, developing countries are concerned that such protection may reduce their ability to access environmentally sound technologies in order to promote sustainable development. Their concerns centre around whether TRIPS facilitates access to and transfer of technology, the development of environmentally sound technologies, and in its operation ensures compatibility with the relevant provisions of MEAs. Another concern is whether the TRIPS Agreement reduces the possibility of controlling technology that may have adverse environmental effects. On the other hand, it has also been noted that though the TRIPS Agreement may increase difficulties in accessing environmentally sound technologies, it also may encourage investment in and development and transfer of environmentally sound technologies. It may also offer alternative mechanisms such as compulsory licensing and innovative sui generis systems to protect traditional knowledge. Other issues pertaining to the transfer of environmentally sound technology are discussed in the report of the Secretary-General on that subject (E/CN.17/1996/13 and Add.1).

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9. Capacity-building

28. Further progress has been made by UNCTAD, UNEP and the United Nations Development Programme (UNDP) in the implementation of technical assistance programmes for capacity-building. UNCTAD and UNDP jointly identified four areas for further capacity-building on trade, environment and development. They include:

- (a) Strengthening research activities in developing countries;
- (b) Supporting institutional capacity-building which may contribute to better integration of trade and development policies and greater policy coherence;
- (c) Supporting the timely and effective participation of developing countries in international trade negotiations and international environmental negotiations;
- (d) Support to the private sector, in particular small and medium-sized firms.

UNCTAD's Ad Hoc Working Group on Trade, Environment and Development considered that country case studies constitute a relevant tool in examining the effects deriving from the linkages of environmental and trade policies, both at the national and international levels. The Working Group encouraged the continuation of those studies by UNCTAD, in cooperation with UNDP and UNEP. ITC also has an important role to play in technical assistance.

10. Institutional issues

29. Since the third session of the Commission, progress has continued to be made in international forums in addressing issues related to trade, environment and sustainable development. The WTO Committee on Trade and Environment continued its deliberation in preparation of the ministerial meeting to be held in Singapore in December 1996. The UNCTAD Ad Hoc Working Group on Trade, Environment and Development completed its work, in accordance with its terms of reference, and recommended areas for future UNCTAD activities in the area of trade, environment and development. Trade and environment will also be a topic in UNCTAD at its ninth session (UNCTAD IX). The OECD Joint Session of Trade and Environment Experts presented the results of its work to the OECD Council at the ministerial level and embarked upon a new programme of work.

30. The secretariats of WTO, UNCTAD and UNEP have further strengthened their cooperation and coordination. In particular, the Director-General of WTO and the Secretary-General of UNCTAD have agreed to strengthen further the working relationship between the two organizations in a number of areas, including that of trade and environment. UNCTAD and UNEP are cooperating on a number of issues, in particular on MEAs, the concepts of equivalencies and mutual recognition in the context of eco-labelling and - together with UNDP - in the area of capacity-building.

11. Research agenda

31. The Commission, at its third session, invited UNCTAD, in cooperation with UNEP, WTO, the Food and Agriculture Organization of the United Nations (FAO), the World Health Organization (WHO), the Department for Policy Coordination and Sustainable Development of the United Nations Secretariat and other appropriate institutions to prepare a background paper for the Commission which would review the growing volume of research on trade, environment and sustainable development linkages carried out by international organizations, academic institutions and non-governmental organizations in developed and developing countries, including such research in the framework of projects supported by international and bilateral aid agencies, with a view to identifying possible gaps, through the use of independent trade and environment expert groups, among other methods.

32. A preliminary version of the paper is being made available to the Commission as a background note (English only). The preliminary conclusions indicate that further research is needed in particular in the following areas:

- (a) Trade liberalization and the environment, including the effects of reducing or eliminating agricultural and energy subsidies on sustainable development;
- (b) Environmental protection, technology transfer and trade-related intellectual property rights;
- (c) Trade, environmental and developmental effects of voluntary standards, including concepts such as mutual recognition and equivalencies;
- (d) Enterprise development and sustainable development policies in developing countries, particularly small-scale enterprises;
- (e) Innovative financing mechanisms to support developing countries in their efforts to internalize costs;
- (f) In the context of MEAs, positive measures, such as incentives, to encourage trade in environment-friendly substitutes, voluntary mechanisms on foreign direct investment and technology transfer, and market-based instruments.

B. Recommendations

1. Trade measures in multilateral environmental agreements: trade and development aspects

33. The Commission may wish to:

- (a) Stress the need to develop a greater range of more attractive positive measures, such as effective instruments to facilitate financial and technology transfers to developing countries in order to assist them to meet multilaterally agreed targets, in keeping with the principle of common but differentiated responsibility; and recommend that positive measures are preferable to the threat of the use of trade restrictions to secure compliance with the objectives

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of the MEA. Positive measures could also be employed to complement trade measures and to reduce or obviate the necessity for trade measures to secure compliance with MEAs;

(b) Encourage Governments to ensure appropriate coordination between trade and environment officials at the national and international levels, with a view to promoting compatibility between trade and environment policies and thereby avoiding conflicts among treaties in which they participate;

(c) Invite UNCTAD and UNEP jointly, in cooperation with the secretariats of relevant MEAs, and taking into account the discussions by the Commission at its fourth session, to initiate an intergovernmental process aimed at developing comprehensive non-binding guidelines (i.e., incorporating legal, economic and development considerations) to assist MEA negotiators in their consideration of the possible future use of trade and other measures in MEAs, with a view to promoting sustainable development as well as compatibility between trade and environmental policies.

2. Environmental policies and competitiveness

34. The Commission may wish to:

(a) Firmly reject "green countervailing duties" or other protectionist trade measures, inconsistent with WTO principles, to compensate for negative competitiveness effects, whether real or perceived, of environmental policies;

(b) Considering that complying with the environmental requirements of importing countries may raise particular competitiveness concerns for developing countries and countries with economies in transition, recommend that Governments of developed countries facilitate market access for developing countries and provide them with technical and financial assistance directed towards environmental capacity-building;

(c) Encourage UNCTAD at its ninth session to propose positive measures at the national and international levels aimed at supporting developing countries in their efforts to achieve the objectives of sustainable development;

(d) Take note of the progress report, submitted by UNCTAD, of the analytical study on the relationship of environmental protection to international competitiveness, job creation and development, and invite UNCTAD to elaborate on the study, with the contributions of Governments, regional economic integration organizations, the private sector, non-governmental organizations and other relevant regional and international organizations, and to submit the results to the Commission at its fifth session, in 1997.

3. Eco-labelling

35. The Commission may wish to invite Governments to ensure adequate transparency of newly emerging environmental policy measures with possible trade effects, including eco-labelling, *inter alia*, by considering contributions from interested parties, including consumer and environmental groups and foreign producers, at an appropriately early stage in the design of the measures, and to

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encourage private standardization bodies to do the same; invite national Governments and standardization bodies to explore the scope for mutual recognition and equivalencies at an appropriate level of environmental protection; and invite ISO to give the fullest possible consideration to these concepts in the elaboration of international standards or guiding principles for environmental labelling.

4. Exports of domestically prohibited goods

36. The Commission may wish to invite UNEP and FAO, in cooperation with other relevant organizations, to examine existing and proposed instruments on DPGs and to thoroughly examine the obligations on exporters and importers in order to improve transparency procedures and provide technical assistance to importers in order to assess and understand the information provided by the exporters.

5. Trade liberalization and the environment

37. The Commission may wish to:

(a) As called for in chapter 2 of Agenda 21, encourage UNEP, in consultation with UNCTAD, to examine mechanisms to ensure that environmental policies provide the appropriate legal and institutional framework to respond to the new needs for the protection of the environment that may result from changes in production and trade specialization;

(b) Invite UNCTAD, in cooperation with other relevant organizations, to examine how further trade liberalization (e.g., through the reduction or elimination of tariff escalation, trade-distortive subsidies and the elimination of tariff and non-tariff obstacles to developing countries' exports) can result in environmental benefits and contribute to sustainable development.

6. Sustainable development of the commodity sector

38. The Commission may wish to:

(a) Invite UNCTAD, in cooperation with UNEP, UNIDO and other relevant organizations, to assist developing countries in implementing pilot projects in export-oriented production and processing activities aimed at taking account of environmental costs;

(b) Encourage Governments to intensify the search for pragmatic methods for increasing cooperation between exporters and importers with a view to facilitating the efforts of developing countries to take account of environmental costs in their development process and to assess the scope for the establishment of sectoral round tables and other formal or informal arrangements for identifying efficient and cost-effective approaches.

7. Biological diversity and trade issues

39. The Commission may wish to encourage UNCTAD to implement its BIOTRADE Initiative as a collaborative effort with the secretariat of the Convention on Biological Diversity, interested United Nations agencies and other

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intergovernmental and non-governmental organizations, the private sector, local communities and academic institutions.

8. Technology transfer

40. The Commission may wish to invite UNIDO, UNEP and UNCTAD to carry out empirical studies on constraints (and mechanisms for alleviating them) to the dissemination of environmentally sound technologies, including those necessary to meet external environmental measures and requirements, inter alia, through international cooperation and support, and invite UNEP to continue its activities in this regard, particularly in cooperation with the private sector.

9. Capacity-building

41. The Commission may wish to invite UNCTAD, UNDP, ITC, UNEP and other United Nations agencies to strengthen cooperation in the implementation of a programme of technical assistance for capacity-building, in accordance with the mandates and expertise of each agency, inter alia, with a view to assisting developing countries and countries with economies in transition to participate effectively in international deliberations on trade and environment, international trade negotiations and international environmental negotiations.

10. Institutional issues

42. The Commission may wish to:

(a) Welcome the progress made in the work of the WTO Committee on Trade and Environment and invite Ministers to consider all items listed in the Marrakesh Decision on Trade and Environment of 15 April 1994, taking into account the objectives of Agenda 21 and the Rio Declaration, and to give due consideration to the results of deliberations of the Commission at its fourth session;

(b) Invite the Ministerial Conference of WTO, to be held at Singapore, to reconvene the Committee on Trade and Environment, with a view to continuing its important work;

(c) Invite UNCTAD and UNEP to transmit the results of their activities on trade, environment and sustainable development to the Ministerial Conference of WTO;

(d) Welcome the progress made in the work of UNCTAD and request UNCTAD to continue to address comprehensively issues related to trade, environment and development and recommend that UNCTAD, at its ninth session, take the appropriate steps for the creation of a new body to carry out intergovernmental activities after the Conference, on a continuing basis;

(e) Invite UNCTAD and UNEP to continue their joint programme of work on trade, environment and sustainable development, in accordance with the views expressed by the Commission on Sustainable Development at its third session 6/ and by the General Assembly in resolution 50/95;

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(f) Note the ongoing work of OECD on trade and environment and encourage it to submit the results of its work to the Commission on Sustainable Development.

11. Research agenda

43. The Commission may wish to take note of the preliminary background paper, prepared by UNCTAD, on the research on trade, environment and sustainable development linkages carried out by international organizations, academic institutions and non-governmental organizations in developed and developing countries, and the conclusions and recommendations contained therein; encourage additional research in particular areas where gaps have been identified; and recommend that international and bilateral aid agencies support research activities in developing countries, in particular in those areas.

Notes

1/ Official Records of the Economic and Social Council, 1995, Supplement No. 12 (E/1995/32), chap. I, sect. A.5.

2/ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, vol. I, Resolutions Adopted by the Conference (United Nations publication, Sales No.E.93.I.8 and corrigenda), resolution I, annex I.

3/ Ibid., annex II, chap. 2.22 (j).

4/ TD/B/42(2)/9-TD/B/WG.6/11, para. 50.

5/ Ibid., para. 48.

6/ Official Records of the Economic and Social Council, 1995, Supplement No. 12 (E/1995/12), chap. I, para. 59.
